

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR SERVICES**

**AT&T CORPORATION**

**1. Introduction**

**A. Parties**

This Contract for services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and AT&T Corporation (hereinafter “Vendor” or “AT&T”), with its principal place of business at One AT&T Plaza, Dallas, Texas 75202.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Texas Building and Procurement Commission’s Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-100, on March 1, 2007, for Information Technology Security Services. DIR acknowledges the fact that Southwestern Bell Telephone Company dba SBC Datacomm has merged with AT&T Corporation and the name of the Vendor has changed to AT&T Corporation. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-100 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Service Agreement; Appendix D, Pricing and Services Index; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-100, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-100, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions. Appendix C, Service Agreement (including related attachments) identifies the Services Vendor may provide to Customer, the price (including discounts, if applicable) for each Service, and the term during which such prices are in effect.

**2. Term of Contract**

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to two (2) optional one-year terms.

**3. Service Offerings**

Services available under this Contract are limited to the Information Technology Security Services as specified in Appendix D, Pricing and Services Index. Vendor may incorporate changes to their services offerings; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

**4. Pricing****A. Manufacturer's Suggested Retail Price (MSRP)**

MSRP is defined as the sales price suggested by the manufacturer or publisher of the service.

**B. Customer Discount**

The minimum Customer discount for all services will be the percentage off MSRP as specified in Appendix D, Pricing and Services Index. Customer Discount includes the DIR administrative Fee specified in Section 5.

**C. Customer Price**

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request. Notwithstanding the foregoing, Customers may not combine or stack discounts above those available under this Contract to get a better price.

3) If pricing for services available under this Contract are provided at a higher discount to: (i) an eligible Customer who is not purchasing those services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said services to eligible Customers, then the available discounts in this Contract shall be adjusted to that higher discount. This Contract shall be amended within ten (10) business days to reflect the higher discounts.

**D. DIR Administrative Fee**

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**E. Tax-Exempt**

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customer shall provide a tax exemption certificate upon request.

**F. Travel Expense Reimbursement**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized by the current State Travel Regulations. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

**H. Changes to Prices**

Vendor may change the price of any service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

**5. DIR Administrative Fee**

**A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is two (2%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.

**B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Sherri Parks, Division Director  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Facsimile: (512) 475-4759  
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:

George Spencer, Director  
AT&T Corporation  
712 E. Huntland Drive, Room 329  
Austin, Texas 78752  
Phone: (512) 421 -5033  
Facsimile: (512) 870-4056  
Email: gs2191@att.com

**7. Service Agreement**

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix C of this Contract, including any Statements of Work and/or

schedules. No changes to the Service Agreement terms and conditions specifically set forth in Appendix C may be made unless previously agreed to by Vendor and DIR.

**8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts.**

**A. Section 2. Definitions,** is hereby amended to add the following:

**G. Affiliate** of a party means any entity that controls, is controlled by, or is under common control with, such party.

**H. Damages** - means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.

**I. Effective Date** - means, for any Service Agreement, the date on which the last party signs the Service Agreement unless a later date is required by regulation or law.

**J. Service Agreement** - means the agreement executed by Customer for Services provided under this Contract, including any Statements of Work and/or Schedules.

**K. Service** - means a service (including Equipment) provided under this Contract.

**L. Service Component** - means an individual component of a Service provided under this Contract.

**M. Site** - means Customer's physical location, including Customer's collocation space on AT&T's, its Affiliate's, or subcontractor's property, where AT&T installs or provides a Service.

**B. Section 3. General Provisions, B. Modification of Contract Terms and/or Amendments** is hereby replaced in its entirety as follows:

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Vendor may be added in a Purchase Order and custom terms and conditions that do not conflict with the Contract (as mutually agreed by Vendor and Customer) may be added in a Service Agreement, and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

**C. Section 4. Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract** is hereby replaced in its entirety as follows:

Subject to the availability and operation limitations of the necessary facilities and equipment, Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for services available under the Contract shall be processed through the Contract.

**D. Section 7. Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions** is hereby replaced in its entirety as follows:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR PERMITTED ASSIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED REASONABLE COSTS, ATTORNEY FEES, AND EXPENSES for bodily injury (including death) or physical damage to tangible or real property to the extent directly arising out of, or resulting from any negligent acts or omissions, or willful misconduct of the Vendor or its agents, employees, or subcontractors, in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**E. Section 7. Vendor Responsibilities, A. Indemnification, 3) Infringements** is hereby replaced in its entirety as follows:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND PERMITTED ASSIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT, but not in circumstances where the claimed infringement arises out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliates or third parties, or combinations of the Service with any services or products not provided by AT&T; (c) AT&T's adherence to Customer's or its Affiliate's written requirements; or (d) use of the Service in violation of this Contract (including the Service Agreement). VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL REASONABLE COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES FOR STATE AGENCY CUSTOMERS. THE DEFENSE SHALL BE COORDINATED

Vendor Contract No. \_\_\_\_\_

BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND, TO THE EXTENT ALLOWED BY LAW, BY VENDOR'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the service with functionally equivalent or superior service so that Customer's use is non-infringing. If neither option (i) nor (ii) are reasonably available, Vendor may terminate the affected service without liability other than as stated in section a), above.

**F. Section 7. Vendor Responsibilities, A. Indemnification, 4) PROPERTY DAMAGE** is hereby replaced in its entirety as follows:

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY TANGIBLE OR REAL PROPERTY OF CUSTOMER OR THE STATE SOLELY AND DIRECTLY DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS DURING THEIR PERFORMANCE UNDER THIS AGREEMENT, THE VENDOR SHALL PAY THE FULL RESULTING REASONABLE COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S REASONABLE SOLE ELECTION.

**G. Section 7. Vendor Responsibilities, B. Taxes/Worker's Compensation/ UNEMPLOYMENT INSURANCE** is hereby replaced in its entirety as follows:

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE EMPLOYMENT BENEFIT OR EMPLOYMENT BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY EMPLOYMENT BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR PERMITTED ASSIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, REASONABLE ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY OF VENDOR, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF EMPLOYMENT BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL REASONABLE COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**H. Section 7. Vendor Responsibilities, H. Confidentiality** is hereby replaced in its entirety as follows:

1) Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

3) **Confidential Information.** To the extent consistent with the Texas Public Information Act, Confidential Information means: information the parties share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement, but only to the extent identified as Confidential Information in writing.

a) **Obligations.** Each party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of software, which is indefinite): (a) be held in confidence; (b) be used and transmitted between countries only for purposes of using the Services or performing this Agreement (including in the case of AT&T, the ability to monitor Customer's transmissions in order to detect fraud, check quality, and to operate, maintain and repair the Services); and (c) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 7), or to the extent compelled to be revealed by law (including the Texas Public Information Act), governmental authority or legal process (but only if such disclosure is limited to

that which is compelled by such legal process and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law or legal process).

b) **Exceptions.** The restrictions in this Section will not apply to any information that: (a) is independently developed by the receiving party; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

c) **Privacy Laws.** Each party is responsible for complying with the privacy laws applicable to its business. If Customer does not want AT&T personnel to comprehend Customer data to which they may have access in performing Services, Customer should encrypt such data so that it will be unintelligible. Until directed otherwise by Customer in writing, if AT&T designates a dedicated account representative as Customer's primary contact with AT&T, Customer authorizes that representative to discuss and disclose Customer's customer proprietary network information (CPNI) to any employee or agent of Customer without a need for further authentication or authorization.

**I. Section 7. Vendor Responsibilities, K. Limitation of Liability** is hereby replaced in its entirety as follows:

1) EXCEPT AS SET FORTH IN SECTIONS 7.A.2 AND 7.A.3, AT&T'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICES, AND NOT CAUSED BY CUSTOMER'S NEGLIGENCE, SHALL IN NO EVENT EXCEED THE APPLICABLE CREDITS SPECIFIED IN A SERVICE PUBLICATION OR PRICING SCHEDULE, OR IF NO CREDITS ARE SPECIFIED, AN AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO CUSTOMER FOR THE PERIOD OF SERVICE DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR OR DEFECT IN THE SERVICES OCCURS AND CONTINUES. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO AT&T, EXCEPT AS SET FORTH IN SECTIONS 7.A.2 AND 7.A.3.

2) SECTION 1) WILL NOT APPLY TO:

a) BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY AT&T'S NEGLIGENCE UNDER SECTION 7.A.2;

b) BREACH OF SECTION 7.H (Confidentiality), OR SECTION 4.C and 4.D (DIR Logo and Vendor Logo);

c) SETTLEMENT, DEFENSE OR PAYMENT OBLIGATIONS UNDER SECTION 7.A.3) (Infringements); OR



d) DAMAGES ARISING FROM AT&T'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

3) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, OR INCREASED COST OF OPERATIONS.

**J. Section 7. Vendor Responsibilities, Section O. Disclaimer of Warranties** is hereby added as follows:

AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE OR COURSE OF DEALING.

**K. Section 7. Vendor Responsibilities, Section P. Disclaimer of Liabilities** is hereby added as follows:

AT&T WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY AT&T'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT, OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT OR A SERVICE AGREEMENT); FAILURE TO CORRECTLY ROUTE OR COMPLETE CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF CUSTOMER'S, ITS AFFILIATE'S, USERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK, OR SYSTEMS.

**L. Section 7. Vendor Responsibilities, Section Q. Application and Survival** is hereby added as follows:

The disclaimer of warranties and limitations of liability set forth in this Contract will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise and whether damages were foreseeable, and will apply so as to limit the liability of each party and its Affiliates, and their respective employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this Section 7 will survive failure of any exclusive remedies provided in this Contract.

**M. Section 8. Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation** is hereby replaced in its entirety as follows:

If, after the first fiscal year in which a particular Service acquired hereunder is installed, funds are not appropriated to continue paying for that particular Service in a subsequent fiscal year or universal service discounts are not received to enable Customer to pay for that particular Service in a subsequent fiscal year, then Customer may terminate that particular Service as of the last day for which funds were appropriated or universal service discounts were received ("Date of Termination"), without being subject to termination charges set forth in the applicable Service Agreement; provided, however; that (i) Customer shall be obligated to pay all charges incurred through the Date of Termination, and (ii) Customer shall exercise such right to terminate by delivery to AT&T of a 30 day written notice setting forth the reason for termination.

**N. Section 8. Contract Enforcement, B. Termination, 3) Termination for Convenience** is hereby replaced in its entirety as follows:

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order within thirty (30) days of issuance of the Purchase Order if it is reasonably determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

**O. Section 8. Contract Enforcement, B. Termination, 4) Termination for Cause, b) Purchase Order** is hereby renamed **Purchase Order or Service Agreement** and replaced in its entirety as follows:

**b) Purchase Order or Service Agreement**

Customer or Vendor may terminate a Purchase Order or Service Agreement upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or Service Agreement in accordance with Section 3.B.2 above. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order or Service Agreement.

**P. Section 8. Contract Enforcement, B. Termination, 7) Suspension and Termination of Services** is hereby added as follows:

The following additional suspension and termination of Services provisions apply:

a) **Fraud or Abuse.** AT&T may terminate or suspend an affected Service immediately by providing Customer with as much advance notice as is reasonably

practicable under the circumstances if Customer (i) commits a fraud upon AT&T, (ii) utilizes the Service to commit a fraud upon another party, (iii) unlawfully uses the Service, (iv) abuses or misuses AT&T's network or Service, or (v) interferes with another customer's use of AT&T's network or services.

b) **Withdrawal of Services.** Notwithstanding that a Pricing Schedule or Service Agreement may commit AT&T to provide a Service to Customer for a Term, and unless applicable law or regulation mandates otherwise, AT&T may discontinue providing a Service upon 12 months' notice, or a Service Component upon 120 days' notice, but only where AT&T generally discontinues providing the Service or Service Component to similarly-situated customers.

c) **Definition of Fraudulent Use.** The fraudulent use of, or the intended or attempted fraudulent use of, CUSTOM NETWORK SERVICE is prohibited. The following activities constitute fraudulent use: (i). Using CUSTOM NETWORK SERVICE to transmit a message, locate a person, or otherwise give or obtain information, without payment for the service, (ii) Using or attempting to use CUSTOM NETWORK SERVICE with the intent to avoid the payment, either in whole or in part, of the charges for the service by: (1) Rearranging, tampering with, or making connections not authorized by this Agreement to any service components used to furnish CUSTOM NETWORK SERVICE, or (2) Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices, or electronic devices.

d) **Materially Adverse Change.** If AT&T revises a Service Publication and the revision has a materially adverse impact on Customer, and AT&T does not effect revisions that remedy such materially adverse impact within 30 days after notice from Customer, then Customer may, as Customer's sole remedy, elect to terminate the affected Service Components on 30 days' notice to AT&T, given not later than 90 days after Customer first learns of the revision to the Service Publication. However, a revision to a Service Publication will not be considered materially adverse to Customer if it changes prices that are not fixed (stabilized) in a Pricing Schedule, if the price change was mandated by a governmental authority, or if the change affects a charge imposed under **Section 4.I** (Additional Charges) of the Contract.

(e) **Internet Services.** If Customer fails to rectify a violation of the AUP within 5 days after notice from AT&T, AT&T may suspend (and later terminate) or terminate the Service. If Services are provided over or access the Internet, AT&T may act immediately and without notice to suspend or terminate Service in response to a court order or government notice that certain conduct must be stopped or when AT&T reasonably determines (i) that it may be exposed to sanctions or prosecution; (ii) that such violation may cause harm to or interfere with the integrity or normal operations or security of AT&T's network or networks with which AT&T is interconnected or interfere with another customer's use of AT&T services or the Internet; or (iii) that continuation of the Services otherwise presents imminent risk of harm to AT&T or AT&T's customers or their respective employees.

**Q. Section 8. Contract Enforcement, B. Termination, 8) Effect of Termination** is hereby added as follows:

a) Termination by either party of a Service Component or Service does not waive any other rights or remedies a party may have under the Service Agreement. Termination or suspension of a Service Component or Service will not affect the rights and obligations of the parties regarding any other Service.

b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination. If Customer terminates a Service or Service Component prior to the date Customer's obligation to pay for Services begins, Customer will reimburse AT&T for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

**R. Section 8. Contract Enforcement, B. Termination, 9) Termination Charges** is hereby added as follows:

If, on or after Customer's obligation to pay for Services begins, Customer terminates a Purchase Order or Service Agreement for convenience or Vendor terminates a Purchase Order or Service Agreement for Customer's fraud or abuse, Customer's hazardous materials violations, or Customer's material breach, Customer will pay termination charges as follows:

If termination occurs before the end of the term of the Service Agreement, 50% (unless a higher percentage is specified in the Service Agreement) of the monthly recurring charges for the terminated Service or Service Component multiplied by the months remaining in the term, plus any waived or unpaid non-recurring charges identified in the Service Agreement, plus any charges incurred by AT&T from a third party (*e.g.*, not an AT&T Affiliate) identified in the Service Agreement, due to the termination.

**S. Section 8. Contract Enforcement, C. Force Majeure** is hereby replaced in its entirety as follows:

Except in the case of payment of amounts due, DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented due to any cause beyond such non-performing party's reasonable control, including an act of God, strike, war, civil disturbance, epidemic, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, embargo, labor disputes, acts of civil or military authority, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party

suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order within thirty (30) days of the issuance of the Purchase Order if it is reasonably determined by the Customer that, as a result of a Force Majeure event, Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

**T. Section 11. Import/Export Control** is hereby added as follows:

The parties acknowledge that equipment, services, software, and technical information (including technical assistance and training) provided under this Contract may be subject to import and export laws, conventions or regulations, and any use or transfer of the equipment, products, software, and technical information must be in compliance with all such laws, conventions and regulations. The parties will not use, distribute, transfer, or transmit the equipment, services, software, or technical information (even if incorporated into other products) except in compliance with such laws, conventions and regulations. Customer, not AT&T, is responsible for complying with such laws, conventions and regulations for all information, equipment and software Customer transmits between countries using the Services.

**U. Section 12. No Third Party Beneficiaries** is hereby added as follows:

This Agreement is for the benefit of permitted Customers and AT&T, and does not provide any third party (including Users) the right to enforce or bring an action for any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

**V. Section 13. Survival** is hereby added as follows:

The respective obligations of Customer and AT&T that by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations set forth in Section 7.H (Confidentiality), Section 7.K (Limitation of Liability), Section 7.O. (Disclaimer of Warranties), 7.P. (Disclaimer of Liabilities), and Section 7.A.2 and 3) (Indemnification), will survive termination or expiration.

**W. Section 14. AT&T Deliverables** is hereby added as follows:

**A. Services.**

AT&T agrees to either provide or arrange to have an AT&T Affiliate provide Services to Customer in accordance with this Contract, subject to availability and operational limitations of systems, facilities and equipment. Where required, an

AT&T Affiliate authorized by the appropriate regulatory authority will be the service provider.

**B. AT&T Equipment.**

Services may include use of certain equipment owned by AT&T that is located at the Site ("AT&T Equipment"), but title to the AT&T Equipment will remain with AT&T. Customer must provide electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to AT&T Equipment (other than ordinary wear and tear) except to the extent caused by AT&T or its agents.

**C. Software.**

Any software used with the Services will be governed by the written terms and conditions applicable to such software. Title to software remains with AT&T or its supplier. Customer must comply with all such terms and conditions and they take precedence over this Contract as to such software.

**X. Section 15. Customer's Cooperation** is hereby added as follows:

**A. Access Right.**

Customer will in a timely manner allow AT&T to access property and equipment that Customer controls as reasonably required to provide the Services, and Customer will obtain, at Customer's expense, timely access for AT&T to property that Customer does not control (other than public property) as reasonably required to provide the Services. Access rights include the right to construct, install, repair, maintain, replace and remove access lines and network facilities, as well as to use ancillary equipment space within a building, as necessary for Customer's connection to AT&T's network. Customer must provide AT&T timely information and access to Customer's facilities and equipment as AT&T reasonably requires to provide the Services, subject to Customer's reasonable security policies. Customer will obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for AT&T to perform its work according to a mutually agreed schedule.

**B. Safe Working Environment.**

Customer will ensure that the location at which AT&T installs, maintains or provides Services is a suitable and safe working environment, free of Hazardous Materials. "Hazardous Materials" means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. AT&T does not handle, remove or dispose of Hazardous Materials, and AT&T has no obligation to perform work at a location that is not a suitable and safe working environment. AT&T will not be liable for any Hazardous Materials. If AT&T encounters any Hazardous Materials at the Site where AT&T is to install, maintain or provide Services, AT&T may terminate the affected Service or Service Component, or

Vendor Contract No. \_\_\_\_\_

suspend performance until Customer removes and remediates Hazardous Materials at Customer's expense in accordance with applicable law.

C. Users.

"User" means anyone who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement, and Customer agrees that Customer is responsible for Users' use of any Services, unless expressly provided to the contrary in applicable Service Publications.

D. Resale of Services.

Customer may not resell the Services to third parties without AT&T's written consent. Where permitted under applicable law, Customer may resell the Services to Customer's Affiliates without AT&T's consent.

This Contract is executed to be effective as of the date of last signature.

**AT&T Corporation**

**The State of Texas, acting by and through the  
Department of Information Resources**

Authorized By: Signature on File

Authorized By: Signature on File

Name: Gabriela Ratulowski

Name: Cindy Reed

Title: Contract Management

Title: Deputy Executive Director  
Operations & Statewide Technology Sourcing

Date: 06/05/08

Date: 06/11/08

Legal: Signature on File 06/10/08